

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Milton O. Crawford,

Plaintiff,

vs.

Smith's Food and Drug Centers, Inc., *et al.*,

Defendants.

Case No.: 2:12-cv-00122-GMN-GWF

ORDER

Pending before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge George W. Foley. (ECF No. 194.) *Pro se* Plaintiff Milton O. Crawford filed an Objection (ECF No. 195) and Defendant Smith’s Food and Drug Centers, Inc. (“Smith’s”) filed a Response (ECF No. 196). Plaintiff also filed a Sur-Reply without leave of the Court. (ECF No. 198.)

I. BACKGROUND

On January 17, 2014, Defendant Smith's filed its Motion for Terminating Sanctions and/or Award of Costs and Fees (ECF No. 182) based upon Plaintiff's repeated failure to comply with discovery requests and with orders of the Court. On February 28, 2014, Judge Foley entered findings and recommended granting Defendant Smith's motion. (ECF No. 194.)

In the R&R, Judge Foley found that Plaintiff's repeated failures to comply with orders of the Court demonstrated willfulness, bad faith, or fault. (*Id.*) Furthermore, Judge Foley found that dismissal was the appropriate sanction because the following five factors all weighed in favor of dismissal: (1) The public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. (*Id.*)

1 **II. LEGAL STANDARD**

2 A party may file specific written objections to the findings and recommendations of a
3 United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
4 D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a de novo
5 determination of those portions of the Report to which objections are made. *Id.* The Court may
6 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
7 Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b).

8 **III. DISCUSSION**

9 The Court has reviewed Plaintiff's arguments in the Objection (ECF No. 195) and Sur-
10 Reply (ECF No. 198), as well as Defendant Smith's Response (ECF No. 196). Because it is
11 unclear from Plaintiff's Objection (ECF No. 195) to which specific portions of Judge Foley's
12 R&R Plaintiff objects, the Court has conducted a de novo review of the entirety of Judge
13 Foley's R&R, and finds no grounds to reject Judge Foley's finding or recommendation.

14 The Court's conclusion is further supported by the lengths to which Plaintiff has been
15 accommodated as a *pro se* litigant. Plaintiff's pleadings have been construed with leniency,
16 and his violations of Court orders have endured even after multiple warnings, instruction as to
17 the governing law, and referral to the Legal Aid Center of Southern Nevada's Ask-A-Lawyer
18 program. This litigation has been pending before the Court for years, and Plaintiff's refusals to
19 participate in discovery, despite multiple warnings, orders, and sanctions of the Court, cannot
20 be construed as anything other than willfulness, bad faith, or fault on Plaintiff's part. The Court
21 agrees with the conclusions of Judge Foley that less drastic sanctions to not appear to be
22 available so as to facilitate a determination of this case on the merits.

23 Accordingly, the Court will accept and adopt the recommendations of Judge Foley, in
24 full. This case shall be dismissed with prejudice, but the Court will not award further costs and
25 fees against Plaintiff at this time.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the Report and Recommendation (ECF No. 194) is
3 **ACCEPTED and ADOPTED** in full.

4 **IT IS FURTHER ORDERED** that Defendant's Motion for Terminating Sanctions
5 (ECF No. 182) is **GRANTED**. Plaintiff's claims are dismissed with prejudice. The Court will
6 not award fees and costs at this time. The Clerk shall enter judgment accordingly, and this case
7 shall be closed.

8 **DATED** this 9th day of April, 2014.

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12 Gloria M. Navarro, Chief Judge
13 United States District Court
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